IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6130 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JORAVARKHAN ABDULKHAN

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 6130 of 1988
NOTICE SERVED for Petitioner No. 1
Shri PANDYA, A.G.P. for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/12/2002

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the impugned order of discharge from service dated 21.6.1988 (Annexure : B) passed by Respondent No.1 - D.S.P., Sabar Kantha District, whereby he was removed from service as Police Constable on the ground that

without obtaining, oral or written, permission of the Controlling authority he remained absent from duty since 11.5.1986.

2. Initially, this petition was filed by the petitioner through his learned Counsel Ms.P.B.Sheth. It seems that thereafter fresh notice was issued to the petitioner to make alternative arrangement in the matter. However, the petitioner has not chosen to engage any other Advocate to plead his case before this Court.

3. In view of the above, after hearing learned A.G.P. Shri Pandya for the respondent, this petition is disposed of by this order.

4. Having gone through the averments made in this petition it appears that the case of the petitioner is that the impugned order of discharge from service is a punitive order which could not have been passed without extending proper opportunity by holding proper inquiry. In response to the notice of Rule served upon the respondent, Reply Affidavit is filed by D.I.G. (Administration) who has explained in his Affidavit that on earlier occasion the petitioner was discharged from service on this very ground, but on the representation made to the Authority he was given one more chance and reinstated in service from 17.1.1986, but he had not improved and again remained absent from duty without prior permission of the Controlling Authority for a considerable long time and, therefore, his services were again terminated by passing the impugned discharge order discharging him from service. Thus, it is clear that it was not a punitive action and it was an order of simpliciter discharge from service.

5. One can not afford to remain absent from duty in a discipline force like Police Department. If he continuously remained absent then his service can always be put to an end by passing the discharge order.

6. In view of above discussion this petition fails and dismissed with no order as to costs.

sd/-

Date : December 11, 2002 (B.J.Shethna, J.)

sas